

REMARKS

Claims 1-3 and 5-23 are pending in the present application. Claim 1 has been amended and support for this amendment can be found in Figure 1. Claims 24-27 have been canceled without prejudice as to the subject matter therein and Applicants reserve the right to prosecute this subject matter in an application that claim priority to the present application.

As an initial matter, Applicants submit that the finality of the present office action is improper. The present rejection of claims 24-27 is based on newly cited art (Altman in view of Huber) and was not necessitated by an amendment to the claims since these claims were not amended in the previous response. Applicants were not given a previous opportunity to address the 35 U.S.C. 103(a) rejection of claims 24-27 in view of U.S. Patent No. 2,717,599 to Huber, since this reference was cited for the first time in the present office action. As stated by the MPEP §706.07(a):

A second...action on the merits...will not be made final if it includes a rejection, on newly cited art, other than information submitted in an information disclosure statement..., of any claim not amended by applicant...in spite of the fact that other claims may have been amended to require newly cited art.

Therefore, even though claim 1 was amended in the previous response, claims 24-27 were not and the rejection of these latter claims is based on newly cited art that was not submitted in an IDS. As such, Applicants request withdrawal of the finality of the present office action.

The Claims Are Not Anticipated by U.S. Patent No. 4,753,641 by Vaslow ("Vaslow")

Claims 1, 2 and 6-10 stand rejected under 35 U.S.C. 102(b) as being allegedly anticipated by Vaslow. However, Vaslow does not describe a needle having a distal most end that is a curvilinear tip. As can be seen from the figures and the accompanying description of the figures, Vaslow describes a needle that terminates in a point 4 that lies on the longitudinal axis 14, which is parallel to the needle axis 18. (See col. 5, lines 21-26). The edge 5, which meets point 4, is not depicted as being curvilinear. The Examiner states that the distal end of Vaslow terminates in a curvilinear distal tip, defined by the Examiner as the line of curvature of 20 from the point marked by 8 to the point marked by 4. However, this "inward arc," as described by the Examiner, is not at the distal most end of the needle of Vaslow. As stated above, the distal most end (4) of Vaslow, is a point that is parallel to the longitudinal axis of the needle and is not

curvilinear. For at least this reason, Applicants submit that Vaslow does anticipate claim 1 (and all claims that depend therefrom) and Applicants request withdrawal of this rejection.

The Claims Are Not Rendered Obvious by U.S. Patent No. 4,537,593 to Alchas (“Alchas”) in View of Vaslow

Claims 3, 5 and 12 (which depend directly or indirectly from claim 1) stand rejected under 35 U.S.C. 103(a) as being allegedly rendered obvious by Alchas in view of Vaslow. Applicants traverse this rejection because contrary to the Examiner’s assertion, Alchas does not describe a needle having a distal most end that is a curvilinear tip (31). The tip of Alchas is clearly the endpoint of two straight lines. Further, Alchas states that the closed planar portion 31 “terminates at a straight edge 32 lying at an angle to longitudinal axis 34” (see col. 5, lines 42-46). Further, Alchas states that “flat portion 31 includes a tapered portion 35 which is tapered toward straight edge 32 in a razor-like fashion” (see col. 5, lines 53-55). Therefore, Applicants submit that Alchas does not make up for the deficiencies of Vaslow. For at least this reason, Applicants submit that claims 3, 5, and 12 are not rendered obvious by the combination of Alchas and Vaslow and Applicants request withdrawal of this rejection.

The Claims Are Not Rendered Obvious by Vaslow in View of U.S. Patent No. 6,346, 099 to Altman (“Altman”)

Claims 11 and 13-16 (which depend directly or indirectly from claim 1) stand rejected under 35 U.S.C. 103(a) as being allegedly rendered obvious by Vaslow in view of Altman. As stated above, Vaslow does not describe a needle having a distal most end that is a curvilinear tip. Alchas does not make up for this deficiency. Specifically, Altman describes a “simple straight hollow 316 LVM stainless steel needle.” (See col. 5, lines 55-56). For at least this reason, Applicants submit that claims 11 and 13-16 are not rendered obvious by the combination of Vaslow and Altman. As such, Applicants request withdrawal of this rejection.

The Claims Are Not Rendered Obvious by Vaslow in View of U.S. Patent No. 5,873,864 to Luther (“Luther”)

Claims 17-20 (which depend directly or indirectly from claim 1) stand rejected as being allegedly rendered obvious by Vaslow in view of Luther. As stated above, Vaslow does not

describe a needle having a distal most end that is a curvilinear tip. Luther does not make up for this deficiency. For at least this reason, Applicants submit that claims 17-20 are not rendered obvious by the combination of Vaslow and Luther. As such, Applicants request withdrawal of this rejection.

The Claims Are Not Rendered Obvious by Vaslow in View of U.S. Patent No. 5,843, 048 to Gross ("Gross")

Claim 21 (which depends from claim 1) stands rejected under 35 U.S.C. 103(a) as being allegedly rendered obvious by Vaslow in view of Gross. As stated above, Vaslow does not describe a needle having a distal most end that is a curvilinear tip. Gross does not make up for this deficiency. For at least this reason, Applicants submit that claim 21 is not rendered obvious by the combination of Vaslow and Gross. As such, Applicants request withdrawal of this rejection.

The Claims Are Not Rendered Obvious by Vaslow in View of U.S. Patent No. 5,817,052 to Johnson ("Johnson")

Claims 22 and 23 stand rejected as being allegedly rendered obvious by Vaslow in view of Johnson. As stated above, Vaslow does not describe a needle having a distal most end that is a curvilinear tip. Johnson does not make up for this deficiency. For at least this reason, Applicants submit that claim 21 is not rendered obvious by the combination of Vaslow and Johnson. As such, Applicants request withdrawal of this rejection.

The Claims Are Not Rendered Obvious by Altman in View of U.S. Patent No. 2,717,599 to Huber ("Huber")

Claims 24-27 stand rejected as being allegedly rendered obvious by the combination of Altman and Huber. Applicants submit that this rejection is rendered moot as these claims have been canceled. Accordingly, Applicants request withdrawal of this rejection.

CONCLUSION


It is respectfully submitted that the present application is now in condition for allowance, which action is respectfully requested. The Examiner is invited to contact Applicants' representative to discuss any issue that would expedite allowance of the subject application.

Any fees for extension(s) of time or additional fees required in connection with the filing of this response, are hereby petitioned under 37 C.F.R. § 1.136(a), and the Commissioner is authorized to charge any such required fees or to credit any overpayment to Kenyon & Kenyon's Deposit Account No. 11-0600.

Dated: 8-16-06

Respectfully submitted,

KENYON & KENYON LLP


By: Zeba Ali
(Reg. No. 51,392)

1500 K Street, N.W.
Suite 700
Washington, D.C. 20005
Tel: (202) 220-4200
Fax: (202) 220-4201